

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT,
ORANGE COUNTY HEALTH CARE
AGENCY, CALIFORNIA DEPARTMENT
OF EDUCATION.

OAH CASE NO. 2010120211

ORDER DENYING DISTRICT'S
MOTION TO DISMISS ISSUE 4;
DETERMINATION OF
INSUFFICIENCY OF ISSUE 4 OF DUE
PROCESS COMPLAINT

On December 6, 2010, Student filed a Request for Due Process (complaint), naming Irvine Unified School District (District), Orange County Health Care Agency (OCHCA), and California Department of Education (CDE) as respondents. The complaint included four issues: (1) whether District and OCHCA failed to provide Student with an appropriate placement; (2) whether District and OCHCA failed to develop comprehensive IEP goals; (3) whether CDE denied Student a free and appropriate public education (FAPE) by failing to take action; and (4) whether the determination of appropriate placement and services should be based on a program's profit or non-profit status.

On December 16, 2010, District filed a motion to dismiss Issue 4, contending, in essence, that a program's designation as profit or non-profit is irrelevant, and therefore should be stricken. In the alternative, District requests that OAH find this claim insufficient, as Student presented no facts describing what programs have been designated as profit or non-profit, or how their designation relates to an alleged denial of FAPE. Student filed an opposition to the motion to dismiss Issue 4 on December 22, 2010.

APPLICABLE LAW AND DISCUSSION

Motion to Dismiss

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion to dismiss Issue 4 is denied.

Notice of Insufficiency

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.² These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.³

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

¹ 20 U.S.C. § 1415(b) & (c).

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁶ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Here, Student's complaint contains a single sentence that mentions profit and non-profit programs, but the complaint includes absolutely no facts outlining, specifically, which programs have been designated as profit or non-profit, and how the designation status of any program relates, in any way, to a proposed initiation or change concerning the identification, evaluation, or educational placement of Student. As such, Issue 4 is insufficiently pled, as it fails to provide District, OCHCA, or CDE with the required notice of a description of the problem and the facts relating to the problem.

ORDER

1. District's motion to dismiss Issue 4 is denied.
2. Issue 4 of Student's complaint is insufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁷
4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, and 3 of Student's complaint.

Dated: December 22, 2010

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings

⁷ The filing of an amended complaint will restart the applicable timelines for a due process hearing.